IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12124 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA **Sd/-**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RENUKABEN RASHMIKANT PADIA - Petitioner(s)

Versus

BANK OF MAHARASHTRA THR' CHIEF MANAGER-STAFF & 1 - Respondent(s)

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Appearance :
MR PARESH UPADHYAY for Petitioner(s) : 1,
MR INDRAVADAN PARMAR for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 31/01/2006

ORAL JUDGMENT

1. The petitioner has invoked Articles 14, 16, 21 and 226 of the Constitution for claiming the declaration that she is entitled to get family pension from the respondent bank and for a direction to them to make

payment of family pension with effect from 25.10.2000 with interest. The prayers are based upon the facts that her husband had joined service of the respondent bank in October, 1976 and had served till 24.10.2000 when he met with an accident and died in harness. By the letter dated 5.10.2004, the Branch Manager of the respondent was ordered to convey to the petitioner that the entire past service of her late husband was forfeited due to his involvement in fraudulent acts and hence his family was not entitled to family pension.

2. By affidavits of the Senior Branch Manager, it is stated that the aforesaid decision dated 5.10.2004 has remained unchallenged and it is an indelible fact that late Shri Padia had committed fraud in 13 Saving Bank accounts by making fictitious credit entries, had enhanced and altered figures of credit slips/vouchers etc. and withdrawn monies immediately from the said accounts which included four accounts of the petitioner and other family members and relatives and thereby he had swindled away sizeable amount of public money of Rs. 11,96,940/-, while he was working with the respondent. It is also averred that the respondent had filed a complaint on 20.1.2001 with City B Police Station. Jamnagar in respect of the aforesaid fraudulent transactions, which complaint was registered under Sections 408 and 409 of the Indian Penal Code, 1860 with Registration No. 74/2001; and, on investigation by the police, the Police Inspector had confirmed in his letter dated 29.10.2001 that there was evidence against late Mr. R.R. Padia of having committed crime. With that background of facts, it is

averred that when full details and required evidence was found by the respondent bank for initiating disciplinary action against Mr. Padia for criminal breach of trust, fraud, etc. committed by him, he had passed away and, therefore, taking disciplinary action by the respondent was not possible. It is submitted on that basis that the acts/ offences committed by late Mr. Padia attracted the penalty of dismissal which entails forfeiture of entire past service and that in turn entailed disqualification for any pensionary benefits. It is also stated that the case of the petitioner was treated as deemed dismissal from service of the bank in view of the peculiar facts and circumstances and considering the pecuniary loss caused to the bank.

2.1. It is further stated in the affidavit that the petitioner is also a conscious beneficiary of various amounts fraudulently credited in her various accounts maintained in different names with the respondent bank itself and that has resulted into straight financial loss of about Rs. 10 lacs which has hitherto remained unrecovered. It is stated that on discovery of fraud committed by the husband of the petitioner in various accounts, legal notices to all the concerned account holders have been issued, calling upon them to pay back with interest @ 16.5% p.a. the respective amounts which were illegally withdrawn and utilized by them in spite of having full knowledge of the entries fraudulently credited in their accounts and to which they were not entitled. It is stated that no repayment is made in response to those notices. The petition is,

thus, resisted with the above facts and the plea that this is not a fit case in which this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution because undue advantage is sought on the basis of unfortunate facts.

3. There is no dispute about the facts that the matter of pension and family pension for the employees of the respondent bank is covered by the statutory provisions enacted in the form of “Bank of Maharashtra (Employees') Pension Regulations, 1995, that they have come into force from 29.9.1995 and that they are made under the provisions of the parent Act, namely The Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. Therefore, since the matter is covered by statutory provisions, Court has to apply and, in case of necessity, interpret those provisions for deciding upon the issues covered by it. The relevant provisions of the aforesaid regulations (“Rules” for short) may be reproduced hereunder:

> **39. Family Pension:**
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> (1) Without prejudice to the provisions contained in these regulations where an employee dies-
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> (a) after completion of one year of continuous service, or
> (b).....
> (c).....
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> the family of the deceased shall be entitled to family pension, the amount of which shall be determined in accordance with Appendix-III.
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> **40. Period of payment of family pension-**

(1) The period for which family pension is payable shall be
(a) in the case the of a widow or a widower, upto the date of death or remarriage which ever is earlier;
(b) .....
(c) .....

CHAPTER IX
GENERAL CONDITIONS

42. Pension subject to future good conduct:-

Future good conduct shall be an implied condition of every grant of pension and its continuance under these regulations.

43. Withholding or withdrawal of pension:-

The Competent Authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct;

Provided that.....

44. Conviction by Court:-

Where a pensioner is convicted of a serious crime by a court of Law, action shall be taken in the light of the judgment of the Court relating to such conviction.

48. Recovery of Pecuniary loss caused to the Bank:-

(1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct of negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service:

Provided that the Board shall be consulted before any final orders are passed;

Provided further that departmental proceedings, if instituted while the employee was in service,

shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service;

Provided also that.....

(2) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee;

Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations.

49. Recovery of Bank's dues:-

The Bank shall be entitled to recover the dues to the Bank on account of housing loans, advances, licence fees, other recoveries and recoveries due to staff co-operative credit society from the commutation value of the pension or the pension or the family pension.

56. Residuary provisions:-

In case of doubt, in the matter of application of these regulations, regard may be had to the corresponding provisions of Central Civil Services Rules 1972 or Central Civil Services (Commutation of Pension) Rules, 1981 applicable for Central Government employees with such exceptions and modifications as the Bank, with the previous sanction of the Central Government, may from time to time determine.

4. Although the allegations of the respondent to the effect that the late husband of the petitioner had caused pecuniary loss of sizeable amount are not specifically denied on oath by the petitioner, the issue is whether family pension could be denied or whether such loss

could be recovered from the amount of family pension due to the petitioner. It cannot be gainsaid that, under the statutory provisions of Rule 39 quoted hereinabove, the family of the deceased employee is statutorily entitled to family pension, subject, however, to other provisions of the regulations. The provisions of Regulations 22, 43 and 48, quoted and relied upon by the respondent, do not appear to be applicable in the facts of the present case. The service of the deceased husband of the petitioner has admittedly not come to be terminated on account of resignation, dismissal or removal and hence the consequence of forfeiture of his entire past service cannot entail under the provisions of Regulation 22. There is no question of withholding or withdrawing pension or part thereof under Regulation 43 since the pensioner is neither convicted of a serious crime or criminal breach of trust or forgery or of acting fraudulently, nor is he found guilty of grave misconduct. Similarly, the provisions of Regulation 48 are also not attracted since there is no question of recovery from pension of any pecuniary loss after any departmental or judicial proceedings where he is found or held to be guilty of such misconduct.

4.1. In the above circumstances, the learned counsel for the respondent sought to fall back upon the provisions of Regulation 49 and submitted in the alternative that the bank was entitled to recover the amount of pecuniary loss as 'other recovery' and that was expressly permitted and provided for in Regulation 49. To substantiate that submission, the

learned counsel submitted details of fictitious entries and transactions made by the late husband of the petitioner in 13 saving bank accounts. He further submitted that not only that the details of fictitious entries in the accounts were not disputed but the family members of the deceased employee had not objected to recovery of part of the amounts by reversal of entries in the respective accounts. Even after such direct recoveries, an amount of Rs. 9,19,775/- remained to be recovered with interest from the amount of family pension, even assuming that family pension was payable to the petitioner, according to the submission.

5. Learned counsel for the petitioner relied upon the statutory right of the petitioner to receive the amount of family pension and even claimed interest thereon with the submission that the dues of the bank or pecuniary loss caused to the bank were not quantified in a judicial proceeding and the bank had to take appropriate legal proceedings for effecting such recoveries.

6. As seen earlier, the right of the family of the deceased employee of the respondent to receive family pension is not absolute but it is expressly made enforceable without prejudice to the other provisions of the Regulations. Therefore, the provisions of Rule 39 and Rule 49 have to be harmoniously construed and applied without creating a conflict between the two. In other words, the right to receive family pension is subject to the recovery of the bank's dues and it would be unfair and improper to suggest that,

while family pension can be claimed as a matter of right, the recovery of the bank's dues can be made only after an adjudication thereof in a court of law. In any case, the provisions of Rule 49 neither provide for any adjudication nor for a specific remedy when quantification of the dues of the bank or the right of the bank to recover a particular amount is disputed. Therefore, it would be appropriate to hold that while the actions of the respondent in forfeiting the past service of the deceased husband of the petitioner and denying family pension to the petitioner was illegal and in violation of the aforesaid rules, the bank was entitled to effect recoveries from the amount of family pension in accordance with the provisions of Regulation 49. In absence of any procedure prescribed for the purpose of effecting such recovery and with a view to avoid any further litigation, it would be necessary, in the interest of justice, and in accordance with the principle of natural justice, if opportunity of hearing were granted to the petitioner before effecting such recovery from the amount of family pension due to the petitioner.

7. In the facts and for the reasons discussed hereinabove, the petition is partly allowed and it is declared that the decision of the respondent to forfeit the past service of late Shri R.R. Padia was illegal and, therefore, the actions pursuant thereto are hereby set aside. Consequently, the petitioner shall be entitled to the amount of family pension in accordance with the provisions of the Bank of Maharashtra (Employees') Pension Regulations, 1995 and the respondent shall be

entitled to effect recovery from the amount of family pension in accordance with the provisions of Regulation 49 thereof. Obviously the amounts which were not legally due from or payable by the late husband of the petitioner cannot be recovered from the family pension due to the petitioner. However, after determining the amount of family pension due to the petitioner, the respondent shall quantify the amount proposed to be recovered and deducted from the due amount of family pension and furnish details thereof to the petitioner to invite objections or representation, if any, from the petitioner. After considering such objections or representations, if any, the respondent shall make a final order regarding payment of and recovery from family pension due to the petitioner. This procedure shall be completed as expeditiously as practicable and preferably within a period of two months. Thereafter, if any amount towards arrears of family pension is ordered to be paid to the petitioner, such amount shall be paid with interest at the rate of 9% p.a. from the date of petition. The amount of Rs. 10,000/- deposited at the time of issuance of the notice in this petition shall be refunded to the petitioner.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

(D.H. WAGHELA, J.)

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